

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of JOHN MARCUS WEBSTER,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SUZANNE G. WEBSTER,

Respondent-Appellant.

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UNPUBLISHED

January 28, 2010

No. 290262

Alpena Circuit Court

Family Division

LC No. 05-005998-NA

Before: Meter, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent argues that her due process rights were violated because Judge Thomas LaCross, who was originally assigned to this matter in 2007 and presided over several hearings before ultimately recusing himself, formerly served as a prosecuting attorney who represented petitioner in a prior child protection proceeding in 2005. Respondent also argues that her right to counsel was violated. We find no merit to these arguments.

Generally, the determination whether proceedings complied with a party's right to due process presents a question of constitutional law that this Court reviews de novo. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). However, because respondent did not request Judge LaCross's disqualification at any of the hearings he presided over, and because respondent never complained about or raised any issue asserting that her right to counsel was violated, these issues are not preserved. We review unpreserved issues for plain error affecting a party's substantial rights. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008).

Disqualification of a judge is governed by MCR 2.003, which provides, in pertinent part:

**(B) Grounds.** A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which:

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(3) The judge has been consulted or employed as an attorney in the matter in controversy.

(4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

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**(D) Remittal of Disqualification.** If it appears that there may be grounds for disqualification, the judge may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement shall be in writing or placed on the record.

Judge LaCross was assigned to this child protection proceeding beginning in September 2007, after a petition was filed requesting that the court exercise jurisdiction over the minor child. Before becoming a judge, Judge LaCross represented petitioner in a prior child protection proceeding involving respondent, which concluded in November 2005. Because less than two years had elapsed since the prior proceeding, Judge LaCross was subject to disqualification under MCR 2.003(B)(4). Further, since child protection proceedings are considered as a single continuous proceeding, see *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973), he was also arguably subject to disqualification under MCR 2.003(B)(3).

Nonetheless, where grounds for disqualification exist, MCR 2.003(D) permits the parties to waive disqualification and consent to a court's continued participation in the case. In this case, respondent signed a remittal of disqualification whereby she agreed to waive Judge LaCross's disqualification and to have him remain as the judge in the case. Further, the record does not support respondent's claim that Judge LaCross delayed raising this issue. On the contrary, he raised the issue at the preliminary hearing on September 20, 2007, and it was respondent who requested more time to consider the matter. Judge LaCross thereafter revisited the matter at the beginning of the pretrial hearing on November 7, 2007, at which time respondent signed the remittal of disqualification. The record also does not support respondent's claim that Judge LaCross accepted the remittal of disqualification without inquiring into counsel's statement that respondent had "equivocated" before signing it. After counsel's statement, Judge LaCross questioned respondent directly, at which time respondent unequivocally indicated that she agreed with the remittal of disqualification. Accordingly, we find no merit to respondent's argument that her right to due process was violated by Judge LaCross's participation in this matter.

The record also does not factually support respondent's argument that her right to counsel was violated. A respondent in child protective proceedings has a due process right to counsel. *In re EP*, 234 Mich App 582, 597-598; 595 NW2d 167 (1999), overruled on other grounds by *In re Trejo*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000). That right is also guaranteed by both statute and court rule. MCL 712A.17c(5) provides that if it appears to the court in a child protection proceeding "that the respondent wants an attorney and is financially unable to retain

an attorney, the court shall appoint an attorney to represent the respondent.” Likewise, MCR 3.915(B)(1)(a)(i) provides that at a respondent’s first court appearance, the court shall advise the respondent of the right to retain an attorney, and of the right to a court-appointed attorney if the respondent is financially unable to retain an attorney. Additionally, MCR 3.915(B)(1)(a)(ii) provides that “if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing.” Similarly, MCR 3.965(B)(5) provides that at a preliminary hearing, “[t]he court must advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 3.915(B)(1)(a).”

The record in this case indicates that an attorney was appointed to represent respondent when she failed to appear at the original preliminary hearing, and that the trial court thereafter adjourned that hearing to secure the presence of respondent and counsel. Respondent was represented by counsel at the continued preliminary hearing, at which time the court informed respondent of the importance of counsel and dissuaded her from proceeding without counsel. Subsequently, when respondent decided at the November 2007 pretrial hearing to represent herself, the court gave her the option of obtaining another court-appointed attorney, but respondent unequivocally declined that option and adamantly stated three times that she wanted to represent herself. In sum, the record reflects that the court made sure that respondent was aware of her options to proceed either with appointed counsel, with retained counsel, or without counsel, and affirmatively took steps to ensure that she was represented by counsel at all proceedings up until the time she unequivocally decided to represent herself. There was no violation of respondent’s right to counsel.<sup>1</sup>

Affirmed.

/s/ Patrick M. Meter  
/s/ William B. Murphy  
/s/ Brian K. Zahra

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<sup>1</sup> Respondent also tangentially raises the issue of the right to a jury trial and suggests that Judge LaCross improperly influenced her to waive this right. We have reviewed the record and find that it does not support respondent’s suggestion of improper influence.